

BAKER BOTTS L.L.P.

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Counsel for Defendants
Chicago Bridge & Iron Company N.V.,
Philip Asherman, Ron Ballschmiede and
Westley Stockton

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE CHICAGO BRIDGE & IRON) CASE NO. 1:17-CV-1580
COMPANY N.V. SECURITIES)
LITIGATION) Hon. Lorna Schofield
)

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
MOTION IN LIMINE NO. 3**

Defendants Chicago Bridge & Iron Co. N.V., Philip K. Asherman, Ronald A. Ballschmiede, and Westley S. Stockton submit this Memorandum of Law in support of their Motion *in Limine* No. 3 to preclude any mention of or reference to the probable testimony of a witness who is absent, unavailable, or not called to testify in this cause, or any mention of or reference to the fact that Defendants have not called to testify an witness equally available to both sides in the cause.

Any such reference would introduce hearsay evidence into the case and prejudice Defendants unfairly. FED. R. EVID. 402, 403, 802, & 804. Such evidence is inadmissible. Fed. R.

Evid. 804. Mention of a witness who has not been called to testify is only appropriate where a witness “is uniquely available to an adverse party.” *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362, 701 (S.D.N.Y. 2014). “An adverse inference [for failure to call a witness] is not warranted, for example, where the controlling or related party makes the missing witness available to its opponent, the party seeking the adverse inference equally could obtain the missing witness’s testimony, or the party seeking the adverse inference made no attempt to obtain the witness’s testimony.” *Id.*

Dated: December 13, 2021

Respectfully submitted,

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By: /s/ David D. Sterling

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